

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

VICTOR SALINAS #1361053

§

v.

§

CIVIL ACTION NO. 6:13cv312

NURSE PIERSON, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Victor Salinas, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Salinas complained that he was the victim of deliberate indifference to his serious medical needs. The magistrate judge ordered prison officials to furnish a copy of Salinas' medical records through a *Martinez* Report. *See Martinez v. Aaron*, 570 F.2d 317, 319 (10th Cir, 1978), *cited with approval in Cay v. Estelle*, 789 F.2d 318, 323 (5th Cir. 1986) and *Parker v. Carpenter*, 978 F.2d 190, 191-92 and n.2 (5th Cir. 1992). A copy of the *Martinez* Report was furnished to Salinas, who filed a response.

After review of the records and response, the magistrate judge issued a report recommending that the lawsuit be dismissed as frivolous and for failure to state a claim upon which relief may be granted. Far from demonstrating deliberate indifference, Salinas' medical records showed that he had received extensive medical care, including multiple trips to the hospital, laser treatments, and numerous prescriptions for eyedrops and other medications. The magistrate judge stated that the fact the treatment received by Salinas was not as effective as he would have liked was not proof of

deliberate indifference and that Salinas failed to show that any of the named defendants refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct clearly evincing a wanton disregard for any serious medical needs. *Domino v. TDCJ-ID*, 239 F.3d 752, 756 (5th Cir. 2001).

In his objections, Salinas states that he has lost all vision in his right eye and the sarcoidosis is now in his left eye. He contends that the defendants have intentionally disregarded his requests for medical treatment and have ignored his complaints, but does not dispute that he has received extensive treatment as documented in his lengthy medical records.

Even if Salinas' condition is in fact worsening as he contends, this does not itself show that any of the defendants have been deliberately indifferent to his serious medical needs. While Salinas argues that the medical records prove that his constitutional rights were violated, he does not identify, nor does a review of the records reveal, any such proof.

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge's proposed findings and recommendations to which the Plaintiff objected. See 28 U.S.C. §636(b)(1) (district judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct and the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 71) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the that the above-styled civil action is **DISMISSED WITH PREJUDICE** for purposes of proceeding *in forma pauperis* as frivolous and for failure to state a claim upon which relief may be granted. It is further

ORDERED that the Clerk shall send a copy of this opinion to the Administrator of the Three Strikes List for the Eastern District of Texas. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby
DENIED.

SIGNED this 9th day of November, 2015.



Michael H. Schneider
MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE